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Current Topics.

The Institute of Arbitrators.

WE have recently received the June issue of the Journal of the Institute of Arbitrators, containing the report of an address by the Rt. Hon. E. LESLIE BURGIN at a meeting on 11th March, 1943. He said that the whole object of the Institute was to conjugate into practical life one of the beatitudes: "Blessed are the peacemakers." The main idea behind the word "arbitrate," which only came into use somewhere in the sixteenth century, was a willingness to serve, a conciliation, a willingness to hold the scales and plumb to the bottom what was not merely a surface dispute, but the real fundamental origin of the difference between the parties. If cases went wrong, in his experience, that is, if they went wrong in his office, it was nearly always a certainty that the reason was that the person who took the first statement of facts, the first exposée of evidence, did not have pluck enough to carve sufficiently deep into the quick. He attached great importance to complete frankness of views. Much needless litigation arose through the failure of a man interrogating a witness to tell him he was an utter fool, or a knave. He thought that in the Institute of Arbitrators they should one day have a discussion of what they would do when the other party to the arbitration was a sovereign government. One's knowledge was somewhat shattered by the notion of sovereignty which applied to a sovereign government, especially when that government elected as its arbitrator its own Minister of Justice. A causerie by the Registrar of the Institute followed Dr. BURGIN'S speech. He referred to *Point of Ayr Collieries, Ltd.* v. *Lloyd George and Others* (*The Times*, 31st March, 1943), in which the Solicitor-General contended that "the Minister" might act as sole judge in his own cause and even if he made an order under a misapprehension the court had no power to challenge its validity. SINGLETON, J., said: "The authority might make a right or a wrong decision, but if he brought his mind to bear on the matter, and acted in good faith, it was not for the court to say whether he had acted reasonably." He also referred to a letter in *The Times* asking that the powers of a Minister be exercised through a tribunal to which the colliery could appeal and quoted the following passage from Plato's Laws: "While legislation is a great achievement, if a well-equipped State gives its excellent laws into the charge of unqualified officials, not merely does no good come of all their excellence and not only does the State become a general laughing-stock, but such societies are pretty sure to find their laws a source of the gravest detriment and mischief." Another apposite quotation was from a speech by the Lord Chancellor in a debate in the Lords in 1928: "Not only is it important that the judiciary should be independent of the Executive, but it is also of vital importance that the public should be satisfied that the judiciary and the Executive are independent . . . it was far better we should abandon the effort to obtain a power of this kind than that we should run any risk of an impression being created, rightly or wrongly, in the minds of the public that there was any connection being established between the Executive and the judiciary and any infringement of that independence of the judiciary which is the palladium of the liberty of the subject." The Registrar concluded by hoping that in the happier conditions of peace, to which all looked forward with pleasurable anticipation, and as peace meant and constantly connoted the rule of law, we might soon see re-established the glory of true justice.

The Drafting of Legislation.

IF, as we are often told, law is the guarantee of our liberties, it is vital that it should be drafted in such a way that as much of it as possible may be understood by as many people as possible, so that justice may not be "entangled in its net of law." Lawyers and legal draftsmen perform a great civilising function, and there has lately been an increasing awareness of this fact. It is impossible, therefore, to over-estimate the importance of the service of the authors of the reports on the Rules of Drafting submitted to the Commissioners on Uniformity of Legislation in Canada and published in the issue of the *Canadian Bar Review* for December, 1942 (vol. 20, pp. 841–876). As many of the vices of drafting indicated in the reports are not unknown on this side of the Atlantic, it may be useful to reproduce a few of them here. Under the heading "References to other Provisions," it is stated that a reference to another section, subsection, clause or sub-clause should identify the section, etc., by its number or letter and not by such terms as "preceding" or "following." Provisos, it is said, should be avoided. They should be used, however, only for the purpose of taking special cases out of a general enactment and providing specially for them. With regard to the *ejusdem generis* rule, that not infrequent cause of litigation, it is proposed that the draftsman should consider whether or not it is necessary to add a declaration that the general words shall not be limited by the particular words. Under the heading "Words and Expressions," it is said that the expressions "it shall be lawful," "it is the duty," "it is declared" and similar expressions should be avoided, and the words "such," "any," "each" and "every" should be avoided where the article may be used. Moreover, the words "said," "aforesaid," "same," "before-mentioned," "whatever," "whatsoever," "wheresoever" and the device "and/or" should be avoided. The passive voice should be avoided and the present tense should be used whenever possible in preference to the future. Many of the suggestions appear to relate merely to grammar and style, but these by themselves constitute a great part of the ingredients of clarity. A reversion to simplicity of expression does not necessarily mean a refusal to give expression to the necessarily complicated rules of our modern civilisation. Short sentences and short words can cope with difficult ideas and their use would lead to a better understanding of the law by those for whom the law is meant. The present war has brought into clear relief the need for simplicity. When a vendor of potatoes, as was shown in a case at Old Street Police Court on 13th July, has to consult a twenty-page order with its schedules and directions in order to discover what is the retail price of potatoes, it is high time that something was done in this respect in the interests of the citizen. The only result of a failure to arrest the flow of verbosity in our statutory rules and orders will be that magistrates will refuse to enforce them and offenders will go scot-free. The whole of the English-speaking world owes gratitude to the Canadians for their courageous initiative in research into this serious problem.

Representation at Pensions Tribunals.

LORD HEMINGFORD raised an important point on the report stage of the Pensions Appeal Tribunals Bill in the House of Lords on 29th July on the consideration of cl. 6, relating to the constitution, jurisdiction and procedure of pensions appeal tribunals. He said that the Lord Chancellor had power to make rules with regard to procedure, and he wished to call attention to the question of representations before the tribunals. His lordship did not think that anyone would raise any objection to the appellants being represented by somebody, not necessarily a professional man. For instance, the representatives of the British Legion did a great deal of very good work in that way. He hoped that the Lord Chancellor might be able to say that the rules would be so drafted as to avoid what happened as a result of the Road Traffic Act. There might grow up a small body of people, composed partly of former lawyers' clerks, who would tend to exploit appellants by offering to undertake cases for them on percentage terms or something of that sort. He was only anxious that, if possible, the rules with regard to representation should ensure, as far as might be, that the appellant should be represented by somebody who could be regarded as having a good status. The Lord Chancellor replied that he was obliged to LORD HEMINGFORD for raising the point. His recollection was that the rules that were made in similar circumstances in connection with the pensions appeal tribunals in the last war did make the sort of provision indicated by LORD HEMINGFORD,

that was, that a body like the British Legion might in proper cases put forward for one of its members the case which he wished to make. VISCOUNT SIMON said that he would look into the matter and at the same time would endeavour to guard against exploitation in directions which might be unsuitable. The Bill received the Royal Assent on 5th August.

War Damage Act.

A SHORT debate on the War Damage Act was one of the matters which enlivened the closing stages of the Commons sittings on 5th August, before the adjournment to the first Sitting Day after 19th September. Mr. CRAVEN ELLIS opened the debate by paying a tribute to the War Damage Commission for the very great service which it had rendered, adding, however, that war damage contribution was one of the causes which would handicap post-war housing. He adduced a statement by the Chancellor of the Exchequer made in October, 1941, that the amount of the value payment "if it is eventually made" would be reduced by so much of the instalments of contribution as had not been made, as evidence that property-owners' claims for war damage might not in fact be met. The Financial Secretary to the Treasury intervened to explain that what the Chancellor undoubtedly meant was, if a value payment was made, as opposed to a cost of works payment. Mr. CRAVEN ELLIS then put the case of the owner-occupier whose house was destroyed and who nevertheless had to continue to pay mortgage interest. Unless he was insolvent, said Mr. ELLIS, he could get no relief under the Courts (Emergency Powers) Act. He also pleaded the case of the private owners who had, under the stimulus offered by the Housing (Financial Provisions) Act, 1933, built thousands of houses at low rentals. They could face a deficiency in peace-time, but the added deficiency caused by war damage contribution would not encourage private enterprise to proceed with much building after the war. He asked that further contributions under the Act be suspended, or alternatively that the two remaining annual instalments be reduced. Captain GAMMONS pleaded that war damage should be a charge on the community, and not restricted to one section of the population. He asked whether there was any means whereby the interest on value payments could be paid during the war so as to help people who have to meet interest charges. He further stated that an anomaly existed in the disparity between payments for cost of works and value payments, and he raised the question of the increase in furniture prices which has resulted in unfairness to those who were paid compensation now as compared with those who were paid earlier in the war. He feared that much property which would otherwise have had years of useful life before it, would become slums when the war was over, simply because the wretched owner had not the money to restore it. People would also be reluctant to put their money in property. Mr. BELLENGER asked that more facilities should be given for putting works into operation. Dr RUSSELL THOMAS said that he agreed that the time had now arrived when we could examine many of the anomalies. He referred to the conditional disclaimer open to a leaseholder under the Landlord and Tenant (War Damage) Acts, and said that if a cost of works payment was decided upon the tenant became liable for the ground rent if he desired to keep on, and yet it was frequently impossible on account of the building restrictions to use the cost of works payment. He also asked whether war damage contribution was demanded from the owners of property which had been condemned or was to be condemned. The Financial Secretary to the Treasury, replying to the debate, agreed that it had served a useful purpose, and said that he was very conscious himself of the heavy burdens on property owners. He added that the legislation seemed to him a reasonable compromise between the interests of property owners on the one hand and those of general taxpayers on the other. With regard to payment of interest on value payments, Mr. ASSHETON said that he was prepared to represent to the Chancellor the view that had been put forward that day. He proposed to write to the members who had put forward points with which he had not dealt in sufficient fullness.

Defence (Fire Guard) Regulations.

HOWEVER remote may seem the probability of a large scale and sustained attack on this country by enemy air forces we must still be on the alert, as the Minister for Home Security recently reminded us. His department issued an even more forcible reminder of this fact on 10th August, in the shape of three formidable looking orders and an even more formidable looking explanatory memorandum relating to fire guards. The Fire Guard (Business and Government Premises) Order, 1943, dated 28th July, 1943, is a little thing of 55 pages, 44 articles, and two schedules. The Fire Guard (Local Authority Services) Order, 1943, of the same date, is even smaller—a mere 24 pages, 19 articles and five schedules. Those concerned will be relieved to hear that the Fire Guard (Medical and Hardship Exemptions) Order, 1943, also dated 28th July, 1943, only runs to 7 pages and 13 articles. The explanatory memorandum gives, for the very moderate price of 6d., 72 closely printed pages of elucidation. There is no index, but there is a six-page table of contents, which he who fire watches may read. According to an introductory note "the present memorandum has a two-fold object: first to indicate the general scope of the new Fire Guard Regulations and of the three orders made thereunder; second, to draw attention to the differences between the new regulations and orders and their predecessors which are now revoked." No attempt, it is said, has been made to re-state in detail those provisions in the former orders which are carried forward into the new orders, since this would have made the document much lengthier and would have made the new provisions difficult to distinguish. Reference is, however, made to so much of the previous provisions as is necessary to the understanding of the changes. That none may think that the elaborate code now amended and consolidated is the product of the unassisted work of the department, it is also announced that it has been prepared in consultation with the National Advisory Council for Fire Prevention, which includes representatives of the British Employers Confederation, the Federation of British Industries, the Association of British Chambers of Commerce, the Trades Union Congress, the Parliamentary Committee of the Co-operative Congress, the National Chamber of Trade, and of local authorities in England, Wales and Scotland. The explanatory memorandum itself was prepared by the Ministry of Home Security and the Scottish Home Department in consultation with a special committee appointed by the National Advisory Council for the purpose. The mountains have thus been in labour for months, and none can complain that they have produced a "ridiculous mouse."

The New Provisions.

THE volume of the regulations and orders is at first sight their outstanding feature, but a closer examination reveals that the departments concerned have completed a substantial and much-needed consolidation of the law, and have also gone some distance towards meeting felt and real grievances. They also extend considerably the scope of service, and thus help to remedy the man-power problem which has for some time past been one of the main obstacles in the way of an efficient fire-guard system. The upper age limit for men is now fixed at sixty-three. At business and government premises men were previously exempt at sixty, but then became enrollable for an indefinite period by the local authority in whose area they lived. Gone also is the system by which all persons liable performed an equal share of the fire guard duties, and if this fell short of the full forty-eight hours of fire guard duty in each four weekly period, were liable to perform part of the balance under the local authority in whose area they lived. There is now to be a fixed team of fire guards for each premises, and those workers who are not selected for this team will be exempt from duty at the premises and will perform the whole of their fire-guard duties under the local authority where they live, except that, where they live in an unprescribed area, they will perform their duties under the local authority in whose area the premises at which they work are situated. Another welcome change is that women are only to be liable outside working hours for compulsory fire-guard duties at the place where they work if there are not enough men available for fire-guard duties at the premises. Women directed to part-time employment are also to be automatically exempt from fire-guard duty at the premises at which they work, and there are a number of exceptional hardship grounds which will entitle a full-time woman worker with certain household duties to a grant of exemption from the District Military Service (Hardship) Committee. A peculiar new provision enacts that an applicant for exemption on grounds of hardship or medical unfitness will be exempted, pending the hearing of his application, only if the occupier, after consultation with the other fire guards or local authority concerned, is of the opinion that the application has been made in good faith. The responsibility of granting exemption on medical grounds is transferred from the hardship tribunals to the Minister, who will delegate it to regional commissioners. Liability for compulsory duty is to be extended to whole-time members of the National Fire Service (for their service premises), whole-time civil defence workers (for their service premises), and certain aliens, subject to a necessary checking on security grounds. The new orders are to come into operation on 20th September, 1943, which is the first day of a four-weekly period.

Courts (Emergency Powers) Rules, 1943.

THE recent consolidation of the statutes relating to the emergency powers of the courts has been closely followed by the making of the Courts (Emergency Powers) Rules on 30th July, 1943 (S.R. & O., No. 1113/L.22). They revoke and incorporate the provisions of all the Courts (Emergency Powers) (Consolidation) Rules, 1940–42, the County Court (Emergency Powers) (Consolidation) Rules, 1940–42, and the Courts (Emergency Powers) (Evacuated Areas) Rules, 1940. The convenience of having all these rules available for ready reference in one booklet will be greatly appreciated by lawyers. The forms of notices, summonses, orders, etc., twenty of them, are contained in an appendix. All concerned in the compilation and drafting of these rules deserve the gratitude of the legal profession and of the larger public whom they serve. The first half of the rules is published at p. 300 of this issue, and the second half will be published next week.

A Conveyancer's Diary.

Settled Land and Trustee Acts (Court's General Powers) Act, 1943.

On 6th July, 1943, the Royal Assent was given to the Settled Land and Trustee Acts (Court's General Powers) Act. This statute is apparently intended to assist in the upkeep of settled land where the tenant for life has been impoverished by the war.

A tenant for life is not liable for permissive waste (see "Gover on Capital and Income," 3rd ed., pp. 67 to 70). In the layman's language that means that he may allow the settled property and the buildings on it to go to pieces if he wishes, provided that he takes no active steps to expedite the process of dissolution. On the other hand, if he wants repairs done, he has to do them at his own expense, unless they fall within one of the relatively limited categories upon which it is legitimate to expend capital moneys. The same general principle applies to land held on trust for sale, with one or two practical differences. For example, the trustees for sale can in a proper case pay out of capital for substantial repairs which are necessary for the preservation of the property (*Re Hotchkys*, 32 Ch. D. 415). Again, since the trustees are the primary recipients of the income they can decide to apply part of it for repairs properly payable out of income whether or not the equitable tenant for life wishes it to be so applied. The court would not be likely to interfere with such an exercise of their discretion (see *Re Robins* [1928] Ch. 721, at p. 736, a passage explaining *Re Gray* [1927] 1 Ch. 242), but it would not make for harmonious relations between the trustees or beneficiaries.

I have always thought that these rules were thoroughly bad, since it seems perfectly clear (1) that all expenditure designed to conserve or increase corpus should fall on corpus, and (2) that it would be better if permissive waste were more discouraged. As things now are, there can be few tenants for life who will care to spend much of their reduced incomes on paying for repairs which they cannot be compelled to do. Likewise, few trustees for sale would be so bold as to expend any of the income (or what is left of it) on repairs to the necessity for which they can simply and safely close their eyes. Clearly, if settled land and land held on trust for sale is not progressively to deteriorate, it is necessary for its value to be kept up by the application of capital.

The new Act apparently seeks to make capital more freely available for such purposes. It may, perhaps, be convenient to refer first to s. 2, which makes a permanent change in the law, while s. 1 provides for the making of certain orders which can only be made before the expiration of the Emergency Powers (Defence) Act, 1939. Section 2 repeals certain words in s. 64 of the Settled Land Act, 1925. It will be remembered that that section authorises a tenant for life to effect any "transaction" which may be approved by the court as being for the benefit of the settled land or of the person interested under the settlement. A "transaction" is widely defined by subs. (2), but the definition is cut down by the following words which are attached to it: "but does not include an application of capital money in payment for any improvement not authorised by this Act or by the settlement." These words are repealed: the effect of the repeal is to assimilate s. 64 of the Settled Land Act to s. 57 of the Trustee Act, which has never been similarly restricted.

By s. 1 of the new Act the jurisdiction of the court under s. 64 and s. 57 is to include "power, in the circumstances specified in subsection (2) of this section, to make an order authorising any expense of action taken or proposed in or for the management of settled land or of land held on trust for sale, as the case may be, to be treated as a capital outgoing, notwithstanding that in other circumstances that expense could not properly have been so treated." By subs. (4) such an order may be made although the action has been taken and paid for before the passing of the Act. By subs. (5) "management" is defined to include all the acts referred to in the Settled Land Act, s. 102 (which is the section enumerating acts of management which can be paid for out of *income* during a minority) and also the cost of employing a solicitor, accountant, surveyor or other person in an advisory or supervisory capacity.

There remain subss. (2) and (3), which lay down the circumstances in which an order can be made and the factors which the court is directed to consider. By subs. (2) the court must always be satisfied (*a*) that the action taken or proposed was or would be for the benefit of the persons entitled under the settlement, or under the trust for sale, as the case may be, generally." These words seem to be substantially similar to those of s. 64 (1) of the Settled Land Act, which have been very liberally interpreted (see *Re White-Popham* [1936] Ch. 725). The court has also to be satisfied on one or other of the following two points: "(*b*) that the available income from all sources of a person who, as being beneficially entitled to possession or receipt of rents and profits of the land or to reside in a house comprised therein, might otherwise have been expected to bear the expense of the action taken or proposed has been so reduced by reason of circumstances arising out of war conditions as to render him unable to bear the expense thereof or unable to bear it without undue hardship; or (*c*) in a case where there is no such person as aforesaid, that the income available for meeting the expense has become insufficient by reason of circumstances so arising." By subs. (5) the phrase "war conditions" is defined as including increase in rates of taxation. By subs. (3) the court is directed to regard all the circumstances, including the obligations, "whether legally enforceable or not and whether or not relating to the land" of the person referred to in para. (*b*) of subs. (2), and the probable benefit or damage to others interested under the settlement.

This then is a useful Act in present circumstances, and it will be a pity if s. (1) lapses, as at present seems intended, at the end of the war. I do not imagine that there will be a great many applications under it, since it is not at all easy to obtain facilities at present for doing major repairs, which seem to be the subject-matter to which the Act is mainly directed. But so far as it is practically applicable, the Act is clearly beneficial. It may be noted in conclusion that the Act proceeds by extending the jurisdiction under Settled Land Act, s. 64, and Trustee Act, s. 37. The former of these sections empowers the tenant for life to do the acts which the court authorises, and the tenant for life will therefore normally be the applicant. Section 57, on the other hand, enables the court to give a special power to the trustees, and therefore in trust for sale cases it will be the trustees who will normally set the court in motion.

Landlord and Tenant Notebook.

Eviction.

In my recent article on "Deserted Premises," I mentioned that evacuation occasioned by enemy action might mean more frequent use of the procedure for determining leases provided by the Deserted Premises Act, 1817, and pointed out that a landlord who omitted to invoke that procedure (or, where circumstances allowed, that of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, s. 1 (6)), might, if he sought to enforce rights against tenants who had appeared to "abandon" the demised premises, find his claims met by a plea of eviction.

The principles will be found stated in *Morrison* v. *Chadwick* (1849), 7 C.B. 266, when sundry special demurrers were tried. The action was (in effect) for breaches of tenant's covenants to repair and for use and occupation. The pleas demurred to included one that the plaintiff had ejected the defendant from part of the demised premises (namely, from a shed), whereupon the defendant had given up the whole "and the plaintiff had from thence-forward had the same and the possession thereof." In his demurrer to this the plaintiff contended that it complained at the most of trespass and did not clearly indicate whether an alleged surrender by operation of law was pleaded. However, in another plea the defendant did put forward surrender by operation of law, and the plaintiff's demurrer in this case maintained that what was stated did not justify this plea.

Coltman, J., described the effects of eviction as follows: "An eviction by a landlord of his tenant from part of the premises creates a suspension of the entire rent during the continuance of the eviction, until the tenant re-enters and resumes possession . . . But there is no authority to show that the tenancy is thereby put an end to, or the tenant discharged from performance of his covenants other than the covenant for the payment of rent."

As text-books contain more about eviction as a defence to a claim for rent than as a cause of action, it is of interest to add that the learned judge proceeded: "It may be urged that the . . . possession was the main inducement to him [the tenant] to enter into the covenants . . . therefore he ought not any longer to be bound by them. But it is to be borne in mind that, in addition to the suspension of rent, the lessee may maintain his action against the lessor for the eviction; by which, it is to be presumed, that he will obtain satisfaction for any inconveniences or loss which he may suffer."

On the surrender by operation of law point, the learned judge agreed that the allegations of relinquishing and taking did not amount to *dissolution* by consent, and the tenancy and obligations to perform its covenants therefore continued. I mention this as showing that "abandonment" is not enough either to entitle a landlord to resume possession or to relieve a tenant of his responsibilities.

Another decision which might come in useful in the circumstances visualised, is *Bird* v. *Defonvielle* (1846), 2 Car. & Kir. 415, which was a simple action for rent for the quarters ending and commencing 25th March, 1845. The premises were let from quarter to quarter, rent being made payable in advance. The defendant claimed to have given a notice to quit, but in the end the decision did not turn upon this, for it was shown that on 24th December, 1845, he had sent the keys round to the plaintiff's house, where a lady refused to take them but they were left on a table, and that soon after that the plaintiff had painted out the name of the defendant's business which had appeared on a door, *and* that on 15th April, 1846, a new tenant had taken possession, holding under a written agreement. It will be observed that it took the landlord some four months odd to find a new tenant, but he was claiming six months' rent. However, Erle, C.J., succinctly stated the law as follows: "If a landlord has entered into profitable occupation, that is an answer to his claim for use and

occupation; but if a tenant has *left a house empty*, and the landlord has put someone into it to take care of it and prevent depredations, it would be otherwise."

It is, of course, important to note that in this case the claim was for rent only, whereas in *Morrison* v. *Chadwick* damages for breaches of repairing covenants were sued for. If that had been the case in *Bird* v. *Defonvielle*, Erle, C.J., would no doubt have been constrained to go into the question of surrender by operation of law. The decision was in fact followed by a spate of authorities on the question whether, and if so when, delivery of keys effects surrender by operation of law: *Cannan* v. *Hartley* (1850), 9 C.B. 634, which turned on a question of authority to receive the keys; *Furnivall* v. *Grove* (1860), 8 C.B. (N.S.) 496, in which the point whether there had been surrender or eviction was again left undecided (landlord ordered to rebuild dangerous structure, said nothing when keys delivered); *Phené* v. *Popplewell* (1862), 12 C.B. (N.S.) 334 (keys at first refused, but then, as in *Bird* v. *Defonvielle*, landlord painted tenant's name out and let premises: surrender); *Smith* v. *Blackmore* (1885), 1 T.L.R. 267 (unsuccessful attempts to return keys; attempts to relet, by arrangement with would-be surrenderor; no surrender till new tenant secured); *Re Panther Lead Co.* [1896] 1 Ch. 978 (acceptance "without prejudice" plus attempt to relet; surrender not effected).

Lastly, in view of the official arrangements sometimes made for repairing war-damaged premises, it is possible that the authority of *Matthey* v. *Curling* (1922) may some day be invoked in a dispute arising out of such an event—e.g., a landlord claiming rent for a period when neither he nor the tenant had what Erle, C.J., called (in *Morrison* v. *Chadwick*, *supra*) "profitable occupation." In this case demised premises were requisitioned during the 1914–18 war (and used for housing German prisoners); a few weeks before the term expired the house was destroyed by a fire for which the authorities disclaimed all responsibility. The landlord sued for the last quarter's rent and for breach of covenant to deliver up in repair. The tenant pleaded eviction by title paramount (as to the rent) and impossibility of performance (as to the whole claim). Eviction by title paramount was negatived for reasons which need not be gone into here. The "impossibility" defence likewise failed, and it is of interest to note a reference to *Morrison* v. *Chadwick* in a judgment delivered in the Court of Appeal, that of Younger, L.J., who agreed "that if the lessee is prevented *by his lessor* from re-entering upon the premises for the purpose of carrying out the work of reinstatement, his liability in that behalf is at an end"; and a further reference to the judgment of Coltman, J., in the speech of Lord Atkinson, who, indeed, recited the facts and approved the principle as laid down. The result appears to be that if a tenant "abandons" premises, the landlord, provided he does nothing from which agreement to accept a surrender will be inferred, retains all rights and remedies.

To-day and Yesterday.

LEGAL CALENDAR.

August 16.—On the 16th August, 1841, there was tried at the Croydon Assizes the case of *Bogle* v. *Lawson*, a libel action against *The Times*, in respect of its exposure of an "extraordinary and extensive forgery and swindling conspiracy on the Continent." The plaintiff was a partner in a firm of bankers at Florence and the allegation was that he was involved in a scheme whereby the conspirators having possessed themselves of one of Messrs. Glyn's genuine letters of credit produced an imitation so perfect that it could not be distinguished from the original. Multiplying copies, which they passed off in Brussels, Cologne, Ghent, Turin, Bologna and Florence, they obtained £10,000 in a few days and only want of caution betrayed them. A technical rule of evidence excluding certain letters led to a verdict for the plaintiff, but the damages were only a farthing, and Chief Justice Tindal refused to allow him costs. The mercantile community were so grateful for the exposure that they subscribed £2,700 to cover the defendant's expenses. The newspaper, however, declined the offer and requested that the money should be employed in founding *Times* scholarships at Oxford and Cambridge for boys from Christ's Hospital and the City of London School.

August 17.—On the 17th August, 1736, "at Hereford Assizes a cause was tried concerning the power of the Bailiff of Cardiff to make burgesses, which was very strenuously argued by counsel on both sides, but the jury without going out of court gave a verdict in favour of the bailiff."

August 18.—On the 18th August, 1873, there opened at the Old Bailey the trial of Austin Bidwell, aged twenty-nine, George Bidwell, aged thirty-four, George Macdonnell, aged twenty-eight and Edwin Noyes, aged twenty-eight. The charge against them was forging and uttering a bill of exchange for £1,000, but this was only part of a huge scheme of forgery whereby they had withdrawn from the Bank of England £100,405 7s. 3d. The profits of the scheme were deposited in the Continental Bank and almost immediately drawn out in the form of Bank of England notes. To cover up their traces the conspirators exchanged these for gold, took back the gold and obtained other notes, which were, in turn, transformed into securities. All through January and February, 1873, the fraud machine worked and there was still a good margin of safety, for the earliest bill only fell due on the 25th March. George Bidwell wrote: "It appears as if the Bank had heaped a mountain of gold out in the street and had put up a notice 'Please do not touch this' and then had left it unguarded with the guileless confidingness of an Arcadian." But the conspirators got careless and the omission from two bills of the date of "sighting" led to exposure. Archibald, J., sentenced all four to penal servitude for life.

August 19.—On the 19th August, 1774, Patrick Maden was standing in the cart at Tyburn with a rope round his neck waiting to be hanged for a robbery. Just at the last moment a man pushed his way through the crowd and assured the undersheriff that he was innocent. The execution was stopped for an hour and Maden and two burglars, who were to be hanged with him, waited still with the ropes on them, while word was sent to the Secretary of State. He was duly respited, and the man who had come forward, Amos Merritt, was taken to Bow Street, where he confessed that he had committed the robbery. Maden was pardoned, but as there was no actual proof of Merritt's guilt, he got off. Still, it came to the same thing in the end, for the following January he was hanged for a robbery in a dwelling-house.

August 20.—On the 20th August, 1779, the Duke of Northumberland preceded by many of the commissioners of pavements, the inhabitants of Clerkenwell, the artificers and workmen with the ensigns of their employment, together with a train of Justices of the Peace for Middlesex, laid the foundation stone of the new court-house on Clerkenwell Green, replacing Hicks' Hall. The inscription read: "The first stone of this Sessions House, erected for the use of the County of Middlesex and for other good and necessary purposes for the better performance of the King's service in the said county, in pursuance of an Act of Parliament made and passed in the 18th year of the reign of King George the Third, was laid by the most noble and puissant prince Hugh, Duke and Earl of Northumberland, *Custos Rotulorum* of the said county, at the request and in the presence of the Commissioners appointed for building the said Sessions House on Friday, the 20th day of August, 1779." Hicks' Hall built in 1612 had stood in St. John Street.

August 21.—The Rev. Thomas Hunter, M.A., was a clever young man, tutor to the two sons of a leading Edinburgh citizen. Unfortunately he started an intrigue with a girl who acted as companion to the lady of the house and the children, having accidentally discovered them together, told their parents. The girl was dismissed, but Hunter was allowed to stay. He brooded on the incident and took a terrible revenge, for one day, while taking the little boys for a walk in the fields near the castle, he cut their throats. He was pursued and arrested before he had time to drown himself, and on the 21st August, 1700, he was tried and pleaded guilty. He was condemned to be executed at the place of the crime, his right hand being first chopped off, and afterwards to be hung in chains between Edinburgh and Leith.

August 22.—As William IV advanced to the front of the grandstand at Ascot in 1832 to acknowledge the cheers of the crowd two stones flung at him struck his hat. They came from the hand of a decrepit old sailor with a wooden leg, who had failed to obtain any redress of a grievance about his pension, of which he had been deprived after being expelled from Greenwich Hospital. He had failed to obtain any help and when he assaulted the King had not eaten for three days. On the 22nd August he was tried at Abingdon for high treason and condemned to be hanged, drawn and quartered. He was seventy years old, had served in the Navy for many years and lost his leg in action through his gallant conduct, so the commutation of his sentence to life transportation was not dangerously lenient.

THE CHINESE OATH.

Every now and then the problem of swearing a Chinese witness presents itself in our courts. Lately it arose at Marlborough Street. A Chinese was asked how he wished to take the oath and the words he succeeded in articulating from his scanty store of English were interpreted by the usher as a desire to blow out a candle, as a ritual preliminary. In the precincts of the court no candle could be found and finally a compromise was reached with a cigarette lighter. After that a translation of the Chinese oath was put before him: "The candle is blown out. I tell the truth, the whole truth and nothing but the truth, or as the light is out so shall my soul be." But his repetition was so obviously incoherent that the case was adjourned to fetch from the East End courts an interpreter who speaks his particular dialect. Then there will be a proper candle too. Sir Harold Morris, K.C., used to tell a story of an eminent City solicitor who had as a client a distinguished and highly connected Chinaman. When the case was about to come on he instructed his managing clerk to have a cockerel and a good-class china plate ready in the corridor so as to be able to meet any eventuality in the matter of taking the oath. Just as his client was about to enter the witness-box he whispered to him, "How will you be sworn?" and the answer was, "We Balliol men always affirm." The plate long remained as a relic in the office, but the clerk's family had roast fowl next Sunday.

Our County Court Letter.

Possession of Farm Cottage.

In *Doman* v. *Williams*, recently heard at Bath County Court, the claim was for possession of a farm cottage, certified by the County Agricultural Committee to be required for the occupation of a person to be employed on work necessary for the proper working of an agricultural holding, under the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*g*) (ii). The plaintiff's case was that he could not accommodate the defendant, his wife and family of two in the farmhouse, as the superior landlord would not allow it to be altered to take two families. The defendant's case was that his house in Bath had been rendered uninhabitable by enemy action. It was subsequently repaired, but, owing to his not having resumed possession, the local authority had requisitioned the house. They were paying the defendant £1 a week as compensation. His Honour Judge Kirkhouse Jenkins, K.C., made an order for possession of the cottage in six weeks. In the meantime, on proper representations being made, the defendant's house might be derequisitioned and restored to him.

Sheep-worrying by Dogs.

In *Wilkinson* v. *Wilkinson*, at Lincoln County Court, the claim was for £181 2s. 4d. in respect of loss and damage to sheep caused by the defendant's dog. The plaintiff's case was that on the first occasion he lost twenty-five ewes, and on the second occasion twelve sheep. On the last occasion he shot the dog, a brown and yellow animal. The defendant's case was that he had had the dog for nine years, and no previous complaint had been made. On the first alleged occasion, the dog had been in the workshop all night. His Honour Judge Langman was not satisfied that the defendant's dog had done the damage on the first occasion. Judgment was given for the plaintiff for £55 4s. 4d. with costs.

Damage by Timber Haulage.

In *Seaman* v. *Dorrel Bros.*, at Cheltenham County Court, the claim was for £21 10s. as damages for trespass. The plaintiff was the owner of Pull Court, Tewkesbury, and her case was that in April, 1942, the defendants had unlawfully and negligently hauled timber, cut from adjoining fields, across her property. Large trunks had been chain-hauled, after the winter floods, causing damage to a grass verge, a roadway and a culvert. His Honour Deputy Judge Woodcock gave judgment for the plaintiff for £10 with costs.

Invalid Suspension of Factory Workers.

In seven recent cases at Hinckley County Court the plaintiffs were girl employees, who claimed three days' wages from their employer. The plaintiffs' case was that they had been "extracted" from their previous employment by the Ministry of Labour and were then directed to work at the defendant's factory on war work. The conditions in the factory, however, were unsuitable, e.g., the heating arrangements were bad, and there were no facilities for making tea. The plaintiffs therefore "walked out," but went to the National Service Officer. He advised them to return to work pending investigation. On their return, however, the defendant suspended them for three days, without pay, for misconduct under the Essential Works Order. The plaintiffs appealed to the Local Appeal Board, who held that the suspension was unjustified, as the plaintiffs' behaviour did not constitute misconduct in view of their legitimate grievance. His Honour Judge Galbraith, K.C., gave judgment for the plaintiffs for the amounts claimed. It is to be noted that, under the Essential Works Order, neither the Local Appeal Board nor the National Service Officer has power to order the employer to pay to the successful appellant the wages which (by reason of the decision of a Local Appeal Board) have been improperly stopped during the invalid suspension. The employee's remedy, in the event of non-payment, is to sue in the county court or before the magistrates under the Employers and Workmen Act, 1875. In whichever court such proceedings are taken, the employer can set up such claim by way of defence, set-off or counter-claim as he may be advised, e.g., for bad workmanship causing "scrap." Such a plea would not be inadmissible as *res judicata*, as the Local Appeal Board is not a court, but an administrative tribunal. The position is different in cases in which an employer terminates the service of an employee with the permission of the National Service Officer. If the employee appeals successfully to the Local Appeal Board, he or she can claim reinstatement. Nevertheless the employee is not thereupon entitled to wages in respect of the period between the termination of the engagement and the resumption of work. See *Docker* v. *Standard Telephones and Cables, Ltd.* [1943] 1 K.B. 92.

The *London Gazette* of the 6th August announced that the Lord Chancellor proposes to amend the Bankruptcy Rules, 1915, by prescribing a new rule providing for notice being given to the Registrar of Solicitors in the event of a solicitor having been adjudged bankrupt.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

War Damage and Disclaimer.

Q. A is the leaseholder of premises which were formerly a small shop with living rooms over, but have now disappeared, having been bombed in November, 1940. The debris was removed and the site cleared and is now vacant. The lease is for ninety-nine years from 24th June, 1883, and the ground rent is £7 per annum. A's leasehold interest is mortgaged. A has put in a claim to the War Damage Commission, but no decision has yet been given on such claim, which presumably will be for a value payment, and if so, such value payment will obviously, owing to increased costs, not be sufficient to cover the cost of rebuilding the premises after the war. A has never given any notice of disclaimer to the lessors and has continued to pay the ground rent. He has notified the lessors in a letter of the fact of the damage and that the site is now cleared. A wishes to be advised as to what steps (if any) he can now take in his own interest. Can he give notice of disclaimer, and if so, what would be the effect of such notice generally and upon the value payment? Would the lessors be then entitled to have any portion (if so, how much) of the value payment paid over to them? If A cannot now disclaim, to whom will the value payment be made (and in what proportions), and will A be liable after the war to rebuild the premises, or can he simply allow the site to remain vacant and merely continue to pay the ground rent until the end of the lease?

A. The giving of a notice of disclaimer would have no effect upon the amount or destination of the value payment, which is governed by s. 9 (2) of the War Damage Act, 1941. It is paid to the persons who were the owners of the freehold and the leasehold at the time of the damage (the ground landlord and A in this case) "in shares proportionate to the amount of depreciation in value which they (i.e., the freehold and leasehold interests —proprietary interests) respectively suffer by reason thereof. Subsequent disclaimer by the leaseholder will be advantageous where the value of the leaseholder's interest after the war damage is too small to justify the continued payment of the ground rent. A will not be liable to rebuild after the war if he does not disclaim (Landlord and Tenant (War Damage) Act, 1939, s. 1 (1)). He may leave the site empty, but on payment of the value payment the Commission may impose conditions as to rebuilding, etc., under s. 7 to comply with the public interest.

Separation Allowances.

Q. A and B, husband and wife, separated in 1941, A, the husband, telling B to leave the home because life between them was no longer bearable, and by correspondence between the solicitors for each party, A agreed to pay B 25s. a week, the agreement being subject to revision if the circumstances of either party changed. Since January of this year B has been employed at a living wage, though A has only just come to hear of this and has given notice suspending payments. B's solicitors claim that the arrears from January to the present should be paid. Is A liable?

A. The separation agreement was apparently informal, and was silent as to the onus of requiring a variation. The wife, B, was entitled to assume that A was waiving, for the time being, any right he might have to claim a variation. In the circumstances, the amounts paid since January were paid under a mistake of law. They are, therefore, irrecoverable. B is accordingly not entitled to suspend payments of the agreed 25s. He is liable for this until a smaller amount is agreed.

Obituary.

Sir Arthur Bryceson.

Sir Arthur Bryceson, town clerk of Woolwich from 1901 to 1933, died on Tuesday, 10th August, aged eighty-one. He was admitted in 1886, and was appointed first Town Clerk of the Metropolitan Borough of Woolwich in December, 1900. In addition to his other duties, Sir Arthur was solicitor to the council in all cases connected with the Small Dwellings Acquisition Acts. He was also a member of the Law Committee of the Association of Municipal Corporations for many years. He received the honour of knighthood in 1920.

Mr. A. E. Chapman.

Mr. Arthur Ernest Chapman, M.A., LL.D., for many years a legal coach in York and Leeds, and assistant lecturer in law at Leeds University, died recently aged eighty-seven. He was educated at St. Peter's School and Christ's College, Cambridge, and was called by the Middle Temple in 1879. He was an honorary member of the Yorkshire Law Society, and a leading figure on the Yorkshire Board of Legal Studies.

Mr. H. Yates.

Mr. Harry Yates, solicitor, senior partner in Messrs. Yates and Son, solicitors, of Blackburn, died on Monday, 2nd August, aged sixty-one. He was admitted in 1903.

Notes of Cases.

HOUSE OF LORDS.

Earl Fitzwilliam's Collieries Company *v.* Phillips (Inspector of Taxes).

Viscount Simon, L.C., Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Romer. 4th August, 1943.

Revenue—Income tax—Mineral lease—Annual payments for right to let down surface—Liquidated damages—Rent payable in respect of "any easement"—Finance Act, 1934 (24 & 25 *Geo. 5, c.* 32), *s.* 21.

Appeal from a decision of the Court of Appeal affirming a decision of Lawrence, J., in favour of the Crown.

The appellant company were the lessees under a lease dated the 31st January, 1935, for a term of ninety-nine years, of certain seams and beds of coal, with liberty to work the demised minerals and to withdraw support from the overlying surface. The lease stipulated for the payment of certain half-yearly sums described as rent, namely, a surface rent, a rent in respect of coal gotten, and other rents described as acreage or footage rents. By cl. 5 (3) (F) the lease provided (without using the word "rent") for certain payments in respect of every acre of coal demised as should have been worked or gotten during the preceding half-year "as liquidated damages in respect of the overlying surface let down." Such sums were payable in lieu of compensation for damage occasioned by subsidence consequent on winning the minerals. The issue in the appeal was whether the payments provided for by cl. 5 (3) (F) were to be treated in the assessment of tax as payments of "rent" in respect of an easement within s. 21 of the Finance Act, 1934. The Court of Appeal held the payments were rent within the section. The company appealed. The Finance Act, 1934, s. 21, provides: "(1) Where rent is payable . . . in respect of any easement . . . the rent shall be charged with tax under Schedule D . . . (4) For the purposes of this section— . . . (*b*) the expression 'easement' includes any right, privilege or benefit in, over or derived from land."

LORD RUSSELL OF KILLOWEN said that however much the House might wish to do so, it was not open to them to say that the right to withdraw support from the surface conferred upon the lessees was an easement within the ordinary meaning of that word. The decision in *Elliott* v. *Burn* [1935] A.C. 84 prevented them from saying that such an easement existed. For the Crown to succeed it must rely on the extended meaning given to the word "easement" by the definition clause in s. 21. In his opinion it was possible to say that the lease conferred on the lessees a privilege over the surface land, viz., the privilege that, by paying the sums mentioned in cl. 5 (3) (F), the lessees obtained freedom to work the coal without any fear of being stopped by injunction from causing subsidence to the surface land, or having to pay damages by reason of any such subsidence. The sums paid under cl. 5 (3) (F) were accordingly rent payable in respect of an easement within s. 21 of the Finance Act, 1934, and the appeal should be dismissed.

VISCOUNT SIMON, L.C., LORD MACMILLAN and LORD WRIGHT agreed that the appeal should be dismissed. LORD ROMER dissented.

COUNSEL: *Wynn Parry*, K.C., and *F. Talbot*; *The Attorney-General* (Sir Donald Somervell), *J. H. Stamp* and *R. P. Hills*.

SOLICITORS: *Andrew, Purves, Sutton & Creery*, for *Newman & Bond*, Barnsley; *Solicitor of Inland Revenue*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

General Council of Medical Education and Registration *v.* Spackman.

Viscount Simon, L.C., Lord Atkin, Lord Macmillan, Lord Wright and Lord Romer. 5th August, 1943.

Medical practitioner—Found guilty of adultery in divorce court—Charge of infamous conduct before General Medical Council—Evidence not before Divorce Court tendered by practitioner—Council refuses to hear evidence—Duty of Council—Medical Act, 1858 (21 & 22 *Vict. c.* 90), *s.* 29.

Appeal from the decision of the Court of Appeal granting an order of *certiorari* to quash the order of the appellants, the General Medical Council, to erase the respondent's name from the Medical Register.

Early in 1941, Langton, J., sitting in the Divorce Division, had granted to P a decree of divorce on the grounds of his wife's adultery with the respondent, a registered medical practitioner. On the 2nd October, 1941, a letter was written by the appellants giving notice to the respondent that the appellants would meet on the 26th November, 1941, to consider the charge that he had been found guilty of adultery with Mrs. P by a decree of the Divorce Court and that he stood in professional relationship with Mrs. P at all material times. The respondent attended the meeting of the appellants with his solicitor. His solicitor admitted that the respondent stood in professional relationship with Mrs. P, but asked leave to call further evidence, which was not given before the Divorce Court, with a view to challenging the correctness of the judge's decision on the issue of adultery. It was admitted that the evidence could have been called at the trial. The appellants refused to hear this further evidence on the ground that such evidence would not have been admitted by the Court of Appeal, and they followed a similar practice. The appellants found the charge proved against the respondent and directed that his name should be removed from the medical register. The Court of Appeal unanimously allowed the appeal of the respondent from the Divisional Court (the Lord Chief Justice and Humphreys, J., Singleton, J., dissenting) and granted an order of *certiorari* directed to the appellants to quash their direction. The Medical Act, 1858, by s. 29, provides: "If any registered Medical Practitioner shall be convicted in England or Ireland of any felony or misdemeanour . . . or shall after due inquiry be judged by the General Medical Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they think fit, direct the registrar to erase the name of such medical practitioner from the register."

VISCOUNT SIMON, L.C., said that it was not disputed that the General Medical Council in exercising this jurisdiction was not a judicial body in the ordinary sense: it was master of its own procedure and was not bound by strict rules of evidence. It was not subject to correction by the courts so long as it complied with s. 29 of the Act of 1858. That section drew a distinction between the case in which the impeached practitioner had been convicted of felony or misdemeanour, and a case in which the allegation of infamous conduct was not connected with a criminal conviction. In the former case, the decision of the council was properly based on the fact of the conviction and the practitioner could not go behind it and endeavour to show that he was innocent of the charge and should have been acquitted. In the later case, the decision of the council, if adverse to the practitioner, must be arrived at "after due inquiry." The question was therefore whether the council in this case could be regarded as having reached its adverse decision "after due inquiry," when it had refused to hear evidence tendered by the practitioner with a view to showing that he had not been guilty of the infamous conduct alleged. This problem did not only arise in connection with conclusions reached in the Divorce Court. A jury's verdict of justification in proceedings for slander, judgment for the plaintiff in proceedings for seduction, a bastardy order might lead to a charge against a medical man of infamous conduct in a professional respect. It seemed obvious, in these other circumstances, that while the council might well treat the conclusion reached in the courts as *prima facie* proof of the matter alleged, it must, when making "due inquiry" permit the doctor to challenge the correctness of the conclusions and to call evidence in support of his contention. The previous decision was not between the same parties; there was no question of estoppel or of *res judicata*. In such cases the decision of the court might provide the council with adequate material for its own conclusion, if the facts were not challenged before it, but, if they were, the council should hear the evidence and give such weight to it as the council thought fit. The same view must be taken if the practitioner challenged the correctness of a finding of adultery by the Divorce Court. The decree provided a strong *prima facie* case, which threw a heavy burden on him who sought to deny the charge, but the charge was not irrefutable. That followed from the structure of s. 29 and from the necessity, if there was to be "due inquiry," of giving the accused party a fair opportunity of meeting the accusations. Unless Parliament otherwise enacted, the duty of considering the defence of a party accused before pronouncing the accused to be guilty, rested upon any tribunal, whether strictly judicial or not, which was given the duty of investigating his behaviour and taking disciplinary action against him. The form in which this duty was discharged was for the rules of the tribunal to decide. This did not mean that the council had to re-hear the whole case by endeavouring to get the previous witnesses to appear before it, although in special circumstances the recalling of a particular witness, in the light of what the accused or his witnesses said, might be desirable. The council would primarily rely on the sworn evidence already given at the trial. It was not required to conduct itself as a court. There was no analogy between the Court of Appeal and the council. The council was entitled to attach to the conclusion of the Divorce Court all the weight that was due to the effect upon a trained judicial specialist of sworn testimony given, subject to cross-examination, before a tribunal which could compel attendance of witnesses and production of documents. This did not entitle the council to refuse to allow the accused to put before it relevant matter in support of his denial. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal.

COUNSEL: *Harman*, K.C., and *Douglas Bartley*; *Havers*, K.C., and *Henry C. Dickens*.

SOLICITORS: *Waterhouse & Co.*; *Hempsons*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

Leicester Permanent Building Society *v.* Butt.

Bennett, J. 5th July, 1943.

Mortgage—Receiver—Failure to account to mortgagee—Right of mortgagee to account—Law of Property Act, 1925 (15 *Geo. 5, c.* 20), *s.* 109 (8) (iv) *and* (v).

Summons.

The plaintiff building society were mortgagees under four mortgages of four properties. The society, having obtained the leave of the court under the Courts (Emergency Powers) Act, 1939, by four separate writings appointed the defendant receiver under each mortgage. The defendant had not applied the moneys received by him in accordance with the provisions of the Law of Property Act, 1925, s. 109 (8) (iv) and (v), and for a long period had failed to account to the society. The society started an action by writ for an account. The defendant failed to appear, and by this summons the society asked for an account against the defendant. Section 109 provides: "Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely, . . . (iv) In payment of the interest accruing due in respect of any principal money due under the mortgage; and (v) In or towards discharge of the principal money if so directed in writing by the mortgagee; and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property."

BENNETT, J., said that the question was whether the receiver could be called on to account by the mortgagee by whom he had been appointed. Subsection (2) of s. 109 provided that a receiver should be deemed to be the

agent of the mortgagor and the mortgagor should be solely responsible for the receiver's acts or defaults. The society alleged that subs. (8) imposed a statutory duty on the receiver in the performance of which the society, as mortgagees, were interested, because, after the receiver had made the payments which paras. (i), (ii) and (iii) required him to make, his next duty was to pay to the society interest accruing due in respect of any principal money due under the mortgage. The proposition of law on which the action was based was that a person interested in the performance of a statutory duty might maintain an action for breach of it against a person statutorily liable to perform it (*Groves* v. *Lord Wimborne* [1898] 2 Q.B. 402, at p. 415, *per* Vaughan Williams L.J.). That principle had been applied in *Woods* v. *Winskill* [1913] 2 Ch. 303. In *Liverpool Corporation* v. *Hope* [1938] 1 K.B. 751, the Court of Appeal held that an action would not lie by a local authority against a receiver to recover unpaid arrears of rates. The local authority were not persons belonging to a class of those for whose benefit and protection the statute imposed the duty. That case was distinguishable from the present, where the society was among the class of persons for whose benefit and protection s. 109 imposed a statutory duty. Accordingly he proposed to make an order for an account.

COUNSEL: *W. F. Waite*, for the society.

SOLICITORS: *Field, Roscoe & Co.*, for *Mr. A. H. Pollard*, Leicester.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Second Consolidated Trust, Ltd. *v.* **Ceylon Amalgamated Tea and Rubber Estates, Ltd.**

Uthwatt, J. 21st July, 1943.

Company—Proxies—Duty of proxy-holder to demand a poll—Duties of the chairman.

Witness action.

The defendant company had issued £130,000 7 per cent. debenture stock. The stock was secured by a trust deed dated the 8th May, 1929. It was thereby provided that the deed might be altered at a meeting of stockholders by extraordinary resolution. Such resolution was defined as a resolution passed at a meeting of the stockholders, at which holders of a clear majority in value of the whole stock for the time being outstanding were present in person or by proxy, by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands and, if a poll were demanded, then by a majority consisting of not less than three-fourths in value of the votes given on such poll. It was also provided that every question submitted to a meeting should be decided in the first instance on a show of hands, unless a poll was demanded by the chairman or two members. A declaration by the chairman that a resolution had been carried or lost was to be conclusive evidence of that fact. A meeting of stockholders was held on the 22nd March, 1943, for the purpose of passing a resolution modifying the trust deed. Fourteen stockholders attended the meeting in person. Proxies had been lodged by ninety-nine stockholders representing £61,224 of stock in favour of the resolution, and by thirteen stockholders representing £31,187 against the resolution. Those proxies were held by the chairman. The fourteen stockholders present in person did not hold sufficient stock to form a quorum for passing an extraordinary resolution, but a quorum was obtained by counting the stockholders who were present by proxy. The resolution was put to the meeting and carried unanimously on a show of hands. The chairman failed to demand a poll. If he had done so, the proxies he held would have defeated the resolution. The chairman declared the resolution carried. The plaintiffs, who were stockholders who had lodged a proxy against the scheme, in this action claimed a declaration that the resolution so passed was invalid.

UTHWATT, J., said that the duty of a chairman of a meeting was to ascertain the sense of the meeting upon any resolution properly coming before it. That was his outstanding duty. His right to demand a poll was not a personal right to be exercised according to his fancy. He had not an unlimited discretion as to the manner in which he should exercise that power. It was to be exercised if it was necessary to ascertain the sense of the meeting. In this case the chairman, in deciding not to demand a poll, had never directed his mind to the real point he had to consider of getting the sense of the meeting. He failed in his duty as chairman, and the resolution was not duly passed. He would add that in addition to his duty to demand a poll, he was under a duty in law to exercise all the proxies which he held as chairman in accordance with the instructions they contained.

COUNSEL: *H. A. Christie*, K.C., and *W. Gordon Brown*; *H. Wynn-Parry* K.C., and *Cecil Turner*; *J. A. Reid*; *M. G. Hewins* (for *Raymond Walton*, on war service).

SOLICITORS: *Linklaters & Paines*; *Mayo, Elder & Co.*; *Stibbard Gibson & Co.*; *Slaughter & May*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

No. 1133. **Alien Registration.** Special Restriction (Coloured Alien Seamen) (Revocation) Order, July 27.

No. 1123/S.37. **Artificial Insemination** (Cattle and Horses) (Scotland) Regulations, Aug. 4.

No. 1122. **Artificial Insemination** (Cattle) (England and Wales) Regulations, Aug. 2.

E.P. 1157. **Control of Communications** Order (No. 1), Aug. 6.

No. 1113/L.22. **Courts** (Emergency Powers) Rules, July 30.

E.P. 1146. **Defence** (Agriculture and Fisheries) Regulations, 1939. Order in Council substituting a new regulation for reg. 28B. Aug. 10.

E.P. 1142–5 (as one publication). Defence (General) Regulations, 1939. Orders in Council amending reg. 14; amending reg. 55AA; adding reg. 58ACA (Visitors from Gibraltar); adding reg. 60CC (Production of Identity Cards to Post Office Officials). Aug. 10.

E.P. 1114. **Essential Work** (Dock Labour) Order, July 30.

No. 1135. **Excess Profits Tax** Regulations, July 31.

E.P. 1141. **Finance.** Order in Council amending reg. 7AA of the Defence (Finance) Regulations, 1939. Aug. 10.

E.P. 1044. **Fire Guard** (Business and Government Premises) Order, July 28.

E.P. 1043. Fire Guard (Local Authority Services) Order, July 28.

E.P. 1045. Fire Guard (Medical and Hardship Exemptions) Order, July 28.

No. 1151. **Fire Services** Emergency Provisions. National Fire Service (General) (No. 4) Regulations, Aug. 5.

E.P. 1154. **Food Transport** (Tomatoes) Order, amending the Directions, April 30, under the Food Transport Order, 1941. Aug. 7.

E.P. 1115. **Limitation of Supplies** (Miscellaneous) (No. 21) General Licence, Aug. 9, *re* supply of Toys and certain Indoor Games.

No. 1124. **Merchant Shipping.** Distressed Seamen (Amendment) Regulations, July 20.

E.P. 1117. **Navigation** Order No. 25, July 29.

No. 1121. **Ploughing Grants** (Amendment) Regulations, July 16.

E.P. 1152. **Railways** Transport of Tomatoes (Amendment) Direction (No. 9), Aug. 9.

No. 1076/S.35. **Session,** Court of, Scotland, etc., Procedure (Fees), Act of Sederunt, July 13, extending certain temporary Acts of Sederunt Increasing Fees.

E.P. 1140. **Vessels** (Immobilisation) (Amendment) (No. 3) Order, Aug. 2.

STATIONERY OFFICE.

List of Statutory Rules and Orders. July, 1943.

MINISTRY OF HOME SECURITY.

Defence (Fire Guard) Regulations, 1943, and the Orders made thereunder. Explanatory Memorandum.

Notes and News.

Notes.

At the annual meeting of the London Court of Arbitration, Mr. J. McLean was elected chairman and Captain Alfred Instone deputy chairman of the Court.

Middlesbrough Court was temporarily transferred recently to a ward in a local hospital so that an injured workman could give evidence. The court was screened from the view of other patients.

The Board of Trade have, with the approval of the Treasury, decided that in respect of the period beginning 3rd September, 1943, and ending 2nd December, 1943, the rate of premium payable under any policy issued under the Commodity Insurance Scheme shall continue to be at the rate of 2s. 6d. per cent. per month. The monthly and three-monthly policies for a fixed sum and the three-monthly adjustable policies previously issued will be continued.

As a result of joint representations by the R.A.C. the A.A. and The Law Society, the authorities have agreed to consider applications from solicitors for replacement tyres although issued with "5" petrol coupons. Normally the holders of these "5" coupons are not entitled to purchase tyres, but it was urged by the three organisations that the work of solicitors is a public necessity, and that where the use of a car was absolutely essential to carry out that work it should be possible for its owner to replace his tyres. Each case will be dealt with on its merits, The Law Society acting as an advisory authority when occasion arises.

WAR DAMAGE PROFESSIONAL FEES.

The War Damage Commission announces an addition to the official notice of 2nd March, 1942, which set out the scale of professional fees for acting in an advisory capacity in connection with the execution of works which are allowed by the Commission in claims for cost of works or temporary works.

Consideration has been given to the appropriate fee to be paid in those cases where working drawings and/or specifications have been prepared but there has been no supervision or certification of accounts by the professional adviser, either because the client did not require him to perform these latter services or because some part (or the whole) of the work for which the drawings and/or specifications were prepared has had to be abandoned, e.g., owing to further war damage, or requisition, or compulsory purchase of the property.

After consultation with, and with the concurrence of, the professional associations concerned, the Commission has decided that the fee to be allowed should be calculated as follows:—

(*a*) Where no supervision or certification is given	Two-thirds of the fee under Scale 2 (*a*) or 2 (*b*), as the case may be.
(*b*) Where all the appropriate services are rendered but part of the work is abandoned	Full scale fee on the work done and two-thirds of the scale fee on the work abandoned.

The only limitation is that where two professional advisers render the full services between them, the aggregate fees paid will not normally exceed a single full fee on the prescribed scale.

Rules and Orders.

S.R. & O., 1943, No. 1113/L.22.

COURTS (EMERGENCY POWERS).

THE COURTS (EMERGENCY POWERS) RULES, 1943.

DATED JULY 30, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 7 of the Courts (Emergency Powers) Act, 1943,[1] section 17 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920,[2], Regulation 7 of the Defence (Evacuated Areas) Regulations, 1940,[3] and of all other powers enabling me in this behalf, do hereby make the following Rules :—

PART I.

APPROPRIATE COURT.

1. *Saving for adjustment court.*]—The appropriate court for the purposes of the Act or the Regulations shall be the court designated in Rules 2 to 6, inclusive :

Provided that where the person against whom it is desired to enforce a judgment or order or to exercise a right or remedy is a debtor in respect of whose affairs proceedings have been instituted under the Liabilities (War-Time Adjustment) Act, 1941,[4] and a protection order is in force, the appropriate court for the purposes of the Act shall, as from the date of the protection order, be the court in which the proceedings under the said Act of 1941 are pending.

2. *Judgments.*]—The appropriate court for the giving of leave to proceed to the enforcement of a judgment or order shall be the court in which the judgment or order is to be obtained, or if already obtained, is to be enforced.

3. *Proceedings.*]—The appropriate court for the giving of leave to institute, or take a step in, proceedings shall be the court in which the proceedings are to be instituted or are pending.

4. *Rates.*]—The appropriate court for the giving of leave to levy a distress for rates shall be the court having jurisdiction to issue the warrant of distress.

5. *Remedies.*]—(1) The appropriate court for the giving of leave to exercise any remedy other than levying distress for rates shall, subject to the following paragraphs of this Rule, be the High Court in any case, and the county court as an alternative to the High Court in the following cases :—

(*a*) For the levying of distress, where the amount for which distress is sought to be levied does not exceed £100, or where the distress is for rent of premises in respect of which the county court would have jurisdiction to hear and determine an action for recovery of land.

(*b*) For entering into possession of land or for the appointment of a receiver of land or for re-entry upon land, where neither the value of the land nor the rent payable in respect thereof exceeds £100 a year.

(*c*) For the realisation of any security, where the amount owing in respect of the mortgage charge or lien does not exceed £500.

(*d*) For taking possession of any property other than land or for the appointment of a receiver of any such property, where the sum sought to be recovered does not exceed £100.

(*e*) For the forfeiture of any deposit, where the total amount payable in respect of which the deposit has been made does not exceed £100.

(2) Where the county court is the appropriate court, the application for leave shall be made in the county court for the district in which the respondent or one of the respondents resides or carries on business or the subject-matter of the application is situate :

Provided that nothing in this paragraph shall prejudice any power of transferring proceedings from one court to another or of retaining proceedings commenced in the wrong court.

(3) Where the High Court and a county court have concurrent jurisdiction under this Rule, the application shall not be made to the High Court except in special circumstances.

(4) Where an application is made to the High Court and the court or a judge is of opinion that it ought to have been made to a county court, the court or judge may order the matter to be transferred to the county court.

6. *Evacuated areas.*]—The appropriate court for the making of an order removing or modifying, in relation to a particular liability, a restriction imposed by Regulation 4 (1) of the Defence (Evacuated Areas) Regulations, 1940, shall be the county court having jurisdiction for the time being for the district in which the premises in respect of which the liability arises are situated or in which the person liable to pay the sum in question resides or carries on business, or if that person does not reside or carry on business in England or Wales, the county court for the district in which the person entitled to the sum in question resides or carries on business.

PART II.

ALL COURTS—SPECIAL PROVISIONS RELATING TO WAR-TIME CONTRACTS.

7. *Stay of execution.*]—(1) Where a person has obtained judgment in an action on a war-time contract, then, subject to paragraph (5) of this Rule and to paragraph (2) of Rule 8, execution of the judgment shall, without any application or order for the purpose being required, be stayed until the person liable on the judgment has had an opportunity, in accordance with these Rules, of showing cause why the discretion of the court should be exercised in his favour by means of a direction that section 1 shall apply to the judgment.

(2) Such an opportunity shall be given at the hearing of an application by the person who has obtained the judgment for a removal of the stay :

Provided that nothing in this paragraph shall prevent the person liable on the judgment from making, in accordance with rules of court, at any time before the stay of execution has been removed, an application for an order directing that section 1 shall apply to the judgment.

(3) Where the execution of a judgment is stayed under this Rule, an application for the removal of the stay may be expressed as an application for leave to proceed, and an order removing the stay may be expressed as an order giving leave to proceed.

(4) Unless the context otherwise requires, the meaning of the expressions "application for leave to proceed", and "order giving leave to proceed", whenever used in these Rules and in documents authorised by these Rules in relation to a case to which this Rule applies, shall include an application for the removal of the stay and an order removing the stay respectively, and the expressions "apply for leave to proceed" and "give leave to proceed" shall have corresponding meanings.

(5) This Rule shall not apply where an order giving leave to proceed is included in a default judgment in pursuance of Rule 9 (2) or 9 (4) (*a*) or (*b*) (which relate to courts other than the county court and courts of summary jurisdiction) or Rule 23 (3) (*a*) (which relates to the county court).

(6) Nothing in this Rule shall prevent a court which has jurisdiction to make a garnishee or charging order *nisi* or to grant an injunction against parting with funds pending the hearing of a summons for the appointment of a receiver by way of equitable execution from making such an order *nisi* or granting such an injunction on an *ex parte* application, and nothing in this Rule shall prevent a county court from issuing a garnishee summons in accordance with the County Court Rules, 1936.[5]

8. *Decision at time of judgment.*]—(1) A person who has obtained a judgment in an action on a war-time contract may make an application, in accordance with and subject to these Rules, for a decision that section 1 shall not apply to the judgment, and such an application may be expressed as an application for leave to proceed.

(2) Where the person liable on the judgment has been given notice of an application to be made at the time of judgment or has otherwise had an opportunity at the time of judgment of showing cause why the discretion of the court should be exercised in his favour, and the court then decides whether to give a direction that section 1 shall apply to the judgment or not, the provisions of Rule 7 imposing a stay of execution shall not apply.

(3) A decision that section 1 shall not apply to the judgment may be recorded as an order giving leave to proceed, and an order directing that section 1 shall apply to the judgment and refusing leave to proceed or giving leave to proceed subject to restrictions and conditions may be expressed as an order refusing leave to proceed or giving leave to proceed subject to restrictions and conditions, as the case may be.

PART III.

HIGH COURT.

Enforcement of Judgments.

9. *Notice at commencement of action.*]—(1) The plaintiff in an action in which there is a claim to a judgment to which section 1 or section 2 of the Act applies may serve on the defendant with the writ of summons a notice in Form 1 with a counter-notice attached thereto in Form 2, and where such a notice has been so served the following paragraphs of this Rule shall apply.

(2) If the plaintiff enters judgment in default of appearance and by that time the defendant has not filed in or sent to the office or registry from which the writ of summons issued a counter-notice in Form 2, then, subject to paragraph (4) of this Rule, the court shall, without requiring an application to be made for the purpose, give the plaintiff leave to proceed, and the order giving such leave shall be included in the judgment as entered.

(3) If the defendant does not enter an appearance in the action but files in or sends to such office or registry a counter-notice in Form 2, the plaintiff may, after judgment has been entered, apply by summons for leave to proceed.

(4) If the defendant does not enter an appearance and the plaintiff is precluded by Order XIII, Rule 16 (which relates to moneylenders) or Rule 17 (which relates to mortgages) of the Rules of the Supreme Court or for any other reason from entering judgment in default of appearance without the leave of the court or a judge, then—

(*a*) if the defendant does not file or send a counter-notice under this Rule, the court or a judge may, when giving leave to enter judgment, or making an order in the action, and without a separate application under the Act, give leave to proceed or make such other order under the Act as the court or judge may think proper ; or

(*b*) if the defendant files or sends a counter-notice under this Rule, the plaintiff may apply for leave to proceed on not less than 7 clear days notice, and the application may be heard at the same time as the application for leave to enter judgment, and, if such notice has been given, the court or judge may make an order giving leave to proceed or such other order under the Act as the court or judge may think proper.

(5) If the defendant enters an appearance and the plaintiff obtains leave to enter judgment or obtains judgment after trial, the plaintiff may, without further notice to the defendant, apply for leave to proceed when leave to enter judgment is given, or at the trial when judgment is given, as the case may be, and the court or judge may, after giving the defendant (if present) an opportunity of showing cause why the discretion of the court should be exercised in his favour, make an order giving leave to proceed or such other order under the Act as the court or judge may think proper.

(6) If the defendant enters an appearance and the plaintiff enters judgment in default of defence, the plaintiff may apply by summons for leave to proceed.

(7) This Rule shall apply to an action commenced by originating summons as it applies to an action commenced by writ of summons.

(1) 6 & 7 Geo. 6. c. 19. (2) 10 & 11 Geo. 5. c. 17.
(3) S.R. & O. 1940 (No. 1209) II, p. 192. (4) 4 & 5 Geo. 6. c. 24.
(5) S.R. & O. 1936 (No. 626) I, p. 282.

10. *Notice before hearing of action or matter.*]—(1) Where a writ of summons has been served without a notice in Form 1, and the plaintiff obtains leave to enter judgment or obtains judgment at the trial, the plaintiff may apply for leave to proceed at the time when leave to enter judgment is given or at the trial when judgment is given, as the case may be, on notice given in accordance with the provisions of the next following paragraph.

(2) Notice shall be in Form 3 and shall be served on the defendant not less than 7 clear days before the hearing of the application or summons for leave to enter judgment or before the trial, as the case may be, unless the court or a judge otherwise orders.

(3) Where a notice in Form 3 has been duly served, the court or a judge may, when judgment or leave to enter judgment is given, make an order giving leave to proceed or such other order under the Act as the court or judge may think proper.

11. *Summons after judgment.*]—Where the plaintiff has obtained judgment, he may, whether the writ of summons is served with or without a notice in Form 1, apply for leave to proceed by summons in the proceedings in Form 4, or in accordance with Rule 12 (which relates to attachment of debts).

12. *Attachment of debts.*]—(1) A judgment creditor who desires to enforce a judgment by means of a garnishee order absolute, or a charging order absolute on stock or shares, or an order for the appointment of a receiver by way of equitable execution, and who has not obtained leave to proceed, may apply *ex parte* for a garnishee or charging order *nisi* or for an injunction against parting with funds pending the hearing of an application for the appointment of a receiver; and the court or a judge may make an order *nisi* or grant an injunction accordingly.

(2) A judgment creditor may apply for leave to proceed at the hearing of the application that the garnishee or charging order *nisi* be made absolute or of the summons for the appointment of a receiver on notice given in accordance with the provisions of the next following paragraph.

(3) The notice shall be in Form 5 and shall be served on the garnishee or chargee (if any) and, if the judgment creditor has not obtained leave to proceed, on the judgment debtor, with the notice of the application that the order *nisi* be made absolute or with the summons for the appointment of a receiver, as the case may be.

(4) At the hearing of the application the court or judge may, if section 1 or section 2 applies to the judgment against the judgment debtor, give leave to proceed or make such other order under the Act in relation thereto as the court or judge may think proper, and, where a garnishee or charging order *nisi* is made absolute, may, if satisfied that a notice in Form 5 has been served on the garnishee or chargee, give leave to proceed to the enforcement of the order absolute against the garnishee or chargee or make such other order under the Act in relation thereto as the court or judge may think proper.

13. *Check on attachment of debts.*]—No garnishee or charging order *nisi* shall be made absolute and no order shall be made for the appointment of a receiver by way of equitable execution unless the court or judge is satisfied that a notice in Form 5 has been served on the garnishee or chargee (if any) and either—

(*a*) that leave to proceed to the enforcement of the judgment against the judgment debtor has been given, or

(*b*) that a notice in Form 5 has been served on the judgment debtor, or

(*c*) that the judgment against the judgment debtor is one to which neither section 1 nor section 2 applies.

14. *Check on issue of judgment summons.*]—No order shall be made for the issue of a judgment summons unless the court or judge is satisfied either that leave to proceed has been given or that the judgment is one to which neither section 1 nor section 2 of the Act applies.

15. *Check on execution.*]—Any party seeking to issue a writ of *fieri facias* or other process of execution to enforce a judgment shall produce to the proper officer the order giving leave to proceed or a præcipe showing that the judgment is one to which neither section 1 nor section 2 of the Act applies.

16. *Proceedings other than actions.*]—Rules 10 to 15 inclusive shall apply to proceedings other than an action as they apply to an action, with such modifications as may be necessary or as may be directed by the court or a judge.

Leave to exercise Remedy or Foreclose or obtain Possession of Mortgaged Property.

17. *Application for leave.*]—(1) An application under subsection (2) of section 1 of the Act for leave to exercise a remedy specified in paragraph (*a*) thereof or to institute proceedings specified in paragraph (*b*) thereof shall, subject to paragraph (6) of this Rule, be by originating summons.

(2) The summons shall include a statement in Form 6.

(3) The summons shall be issued out of the Division of the High Court which ordinarily deals with proceedings of which the subject-matter is similar to the subject-matter of the application:

Provided that where a summons has been issued out of a Division which, in the opinion of the court or a judge, is inappropriate, the court or judge may order that the proceedings shall either continue in that Division or be transferred to the Division out of which the summons ought to have been issued, as the court or judge thinks fit.

(4) The respondent shall not be required to enter an appearance to the originating summons, and accordingly Rule 4E of Order LIV of the Rules of the Supreme Court shall apply thereto.

(5) In the Chancery Division any application under the Act affecting mortgaged land and any action affecting the same mortgaged land shall be assigned to the same judge.

(6) Where in the course of proceedings relating to any mortgage (whether before or after judgment) a party to the proceedings desires to apply under the said subsection (2) for leave to exercise in relation to the mortgaged property any remedy or right specified in that subsection, the application may, if the respondent thereto is a party to the proceedings, be made by summons in the proceedings, and for the purpose of any such application the summons shall include a statement in Form 6.

(7) An application under the said paragraph (*b*) for leave to take a step in proceedings for foreclosure or sale in lieu of foreclosure shall be by summons in the proceedings in Form 7.

(8) Where an originating summons for leave to distrain, or to exercise any other remedy under the said paragraph (*a*), or to institute proceedings for possession of mortgaged property, relates to land within the district of a District Registry, the originating summons may be issued in the District Registry.

(9) Where the registered office of a company is situated within the district of a District Registry, an originating summons for leave to appoint a receiver for the debenture-holders of the company may be issued in the District Registry.

(10) Nothing in the last two foregoing paragraphs of this Rule shall be construed as restricting the jurisdiction of the District Registry at Liverpool or Manchester.

General Provisions as to Procedure.

18. *Attendance of other creditors.*]—Where upon an application under the Act or these Rules it appears to the court or a judge that the defendant or respondent desires that his liabilities other than the liability to which the application relates should be taken into account, and that the defendant or respondent has given notice of the application to persons having claims against him in respect of such other liabilities, the court or judge may permit any such person to be present at the hearing of the application, and may permit him to make representations in relation to the subject-matter of the application:

Provided that nothing in this Rule shall be construed as preventing the court or judge from taking a liability into account by reason only of the fact that notice of the application has not been given by the defendant or respondent to the person having a claim against him in respect of that liability.

19. *Appointment of receiver ex parte.*]—(1) Where a mortgagee of a dwelling-house has, in relation to the mortgage or the dwelling-house, commenced proceedings for leave to exercise any of the rights or remedies specified in subsection (2) of section 1 and he satisfies the court or a judge—

(*a*) that prompt service of the summons cannot be effected; or

(*b*) that the person who, if alive, would be the proper respondent to the summons, is dead and that no grant of representation has been taken out to his estate or that it has not been possible to ascertain the person or persons (if any) who would be entitled to apply for a grant of representation; or

(*c*) that it is otherwise expedient;

the court or a judge may, upon the *ex parte* application of the mortgagee, give leave to exercise any remedy which may be available to him by way of the appointment of a receiver of the rents and profits, or the taking of possession, of the mortgaged dwelling-house.

(2) Leave may be given for the appointment of a receiver subject to such conditions as the court or a judge may think fit to impose, and, without prejudice to the generality of this provision, the court or a judge may require the mortgagee to give an undertaking—

(i) to remove a receiver appointed, if so directed by the court or a judge;

(ii) to direct the receiver to pay to such person as the court or a judge may direct any sums which may become applicable in or towards the discharge of the principal money due under the mortgage in accordance with paragraph (v) of Section 109 (8) of the Law of Property Act, 1925.[6]

(3) For the purpose of giving effect to paragraph (1) (*b*) of this Rule, it shall not be a condition precedent to the issue of an originating summons under Rule 17 that any person be named therein as respondent.

20. *Respondents to mortgagee's application.*]—(1) Subject to the provisions of paragraph (2) of this Rule, the persons to be made respondents to an application by a mortgagee of property for leave to exercise against the property any right or remedy shall be as follows:—

(i) where the mortgagor (whether under personal liability or not) is the owner of the equity of redemption, the mortgagor;

(ii) where the equity of redemption has been assigned, the assignee (whether under personal liability or not);

(iii) where the mortgagor or assignee is dead, the personal representative of the mortgagor or assignee:

Provided that if the mortgagor or assignee has been dead for a period of more than six months and no personal representative has been constituted, the application may be made *ex parte*;

(iv) where the equity of redemption is vested in a trustee, the trustee:

Provided that if the equity of redemption is vested in a trustee as trustee in bankruptcy and the applicant has before making the application obtained from such trustee a written statement that he has no objection to the leave sought being given, the application may be made *ex parte*.

(2) In any application in which a person who is not a respondent to the summons under the provisions of paragraph (1) of this Rule would be affected by the exercise of any such right or remedy as aforesaid, the applicant shall, on applying at the chambers of the judge for an appointment to hear the application, leave at chambers with a copy of the summons a statement giving the name of such person and showing what his interest is in the mortgaged property, and the court or a judge may direct that such person, or any other person who the court or a judge may think would be affected by the granting of the application, be added as the respondent to the application.

(6) 15 & 16 Geo. 5. c. 20.

(3) If the mortgagee is uncertain as to what persons would be affected by the granting of the application, he may issue his application *ex parte*, and on applying for an appointment to hear the application leave at chambers a statement giving the names of all persons who he thinks may be affected and showing the interests of such persons, and the court or a judge may direct which, if any, of such persons are to be made respondents.

(4) Where the court or a judge directs that a person be added as a respondent to a summons, it shall not be necessary to amend the summons, but the original summons and the copy served shall be indorsed with a notice in Form 8, and the person named in the notice shall be treated for all purposes as though he were a person named as respondent to the summons.

21. *Removal to District Registry.*]—Where a defendant to a cause or matter proceeding in London resides or carries on business within the district of a district registry and any question under the Act arises in or in relation to the cause or matter, the court or a judge may, on or without an application for that purpose, order the cause or matter to be removed to the district registry before or after judgment, if in the circumstances the court or judge thinks it just to do so.

22. *Service.*]—(1) Except as otherwise provided in this Rule, service on the defendant or respondent of every notice and summons under this Part of these Rules shall be personal service, and accordingly the Rules of the Supreme Court relating to personal service including Order LXVII, Rules 5 and 6 (which relate to the manner of service and substituted service) shall apply.

(2) Where in any action the defendant has entered an appearance or given a counter-notice with an address for service, any notice or summons under these Rules, may, whether before or after judgment, be delivered at or sent to the address for service instead of being served personally :

Provided that service of such a notice or summons after judgment shall be personal service, if, when the action was commenced, the plaintiff did not serve a notice in Form 1 with the originating process in accordance with Rule 9 (1).

(3) No proof of service of a notice under Rule 9 shall be required if the defendant by his solicitor undertakes in writing to accept service thereof and also of the writ or originating summons to which the notice relates and either to enter an appearance or to give a counter-notice under that Rule.

(4) Where an application is made under Rule 17 (1), no proof of service of the originating summons shall be required if the respondent by his solicitor undertakes in writing to accept service and to attend upon the hearing.

(5) Where in any action to which the defendant has not appeared or filed a counter-notice, or on the further hearing of an originating summons under Rule 17, any summons or notice is required to be served on the defendant or respondent, such summons or notice shall, unless the court or a judge otherwise directs, be sufficiently served if it is sent by post in a registered letter addressed to the defendant or respondent at his last known address and if that letter is not returned through the Post Office undelivered, and such service shall be deemed to have been effected at the time at which the registered letter would in the ordinary course be delivered.

(6) Where the remedy or right claimed in an originating or other summons under Rule 17, or the relief claimed in an action or matter, relates to land, the summons may, by leave of the court or a judge, in a case of vacant possession, if service cannot otherwise be effected, be served by posting a copy of the summons upon the door of the dwelling-house or upon some conspicuous part of the property, or, if the application relates to more than one dwelling-house or property, upon the door of every dwelling-house, or upon some conspicuous part of every property, to which the application relates.

(7) The court or a judge may dispense with service of any application under the Act on any defendant or respondent who is an enemy within the meaning of the Trading with the Enemy Act, 1939,[7] as amended by or under any enactment.

(8) If on any application under the Act in the Chancery Division the judge in person is satisfied that personal service cannot be effected and the judge in person is of opinion that in the interests of justice an order ought to be made, the judge in person may dispense with service of the application on the person named as respondent to the application, or may direct notice of the application to be given to any person who in his opinion ought to have notice thereof.

Part IV.

County Courts.

Enforcement of Judgments.

23. *Notice at commencement of action.*]—(1) A plaintiff commencing an action shall include in the præcipe a statement that there is a claim to a judgment to which section 1 or section 2 applies, or, as the case may be, that there is no claim to a judgment to which either section 1 or section 2 applies.

(2) Unless the præcipe contains a statement that there is no claim to a judgment to which either section 1 or section 2 applies, the registrar shall annex to the summons a notice in Form 10 and the notice shall be served with the summons, and the provisions of Order VIII shall apply to the service of the notice as they apply to the service of the summons to which the notice is annexed, subject to the modification that it shall be a sufficient compliance with the requirements of Order VIII as to indorsements if the indorsement on the summons shows that the facts stated therein apply also to the notice.

(3) Where in any such action a notice has been served with the summons under this Rule, the following provisions shall apply :—

(7) 2 & 3 Geo. 6. c. 89.

(*a*) If judgment is entered in default under Order X, Rule 2, the court shall, without requiring an application to be made for the purpose, give the plaintiff leave to proceed, and an order giving such leave shall be included in the judgment as entered.

(*b*) If the court gives judgment for the plaintiff at the hearing or disposal of the action, then, subject to the next following sub-paragraph, the plaintiff may, at the time of judgment and without further notice to the defendant, apply for leave to proceed, and the court may, after giving the defendant (if present) an opportunity of showing cause why the discretion of the court should be exercised in his favour, make an order giving leave to proceed or such other order under the Act as the court thinks proper.

(*c*) If the court in giving judgment orders the defendant to pay the judgment debt by two or more instalments, or, in the case of a judgment for possession of land or delivery of goods in default of payment of rent or money, suspends the judgment on condition that the defendant pays the rent or money by two or more instalments, no order giving leave to proceed shall be made at the time when judgment is given, but the plaintiff may, at any time while the defendant is in default, apply for leave to proceed on notice under Order XIII, Rule 1, so however that the notice is served not less than 7 clear days before the day fixed for the hearing of the application.

(*d*) If judgment is given or entered for the plaintiff and leave to proceed is not given at the time of judgment, the plaintiff may, at any subsequent time while the defendant is in default, apply for leave to proceed on notice under Order XIII, Rule 1, served as aforesaid, or in accordance with Rule 28 (which relates to garnishee proceedings) or Rule 29 (which relates to equitable execution).

(4) This Rule shall apply to a matter and to a counterclaim as it applies to an action, with the modification that the statement mentioned in paragraph (1) of this Rule shall be filed with the originating process or the counterclaim instead of being included in a præcipe, and such other modifications as may be necessary or as may be directed by the court.

24. *Where Form 10 has not been served.*]—(1) Where an action or matter in which there is a claim to a judgment to which section 1 or section 2 of the Act applies no notice has been served with the originating process under the last foregoing Rule, then—

(*a*) if the defendant appears at the hearing or disposal of the action or matter and the court gives judgment for the plaintiff and does not order the defendant to pay the judgment debt by two or more instalments or (in the case of a judgment for possession or delivery) if the court does not suspend the judgment on condition that the defendant pays the rent or money by two or more instalments, the plaintiff may, at the time of judgment, apply for leave to proceed, and the court may, after giving the defendant an opportunity of showing cause why the discretion of the court should be exercised in his favour, make an order giving leave to proceed or such other order under the Act as the court thinks proper; and

(*b*) if the court gives judgment for the plaintiff and the defendant does not obey the judgment, the plaintiff may, at any time while the defendant is in default, apply for leave to proceed on notice in Form 11.

(2) A notice under this Rule shall be served not less than 7 clear days before the day fixed for the hearing, and may be served by—

(i) a bailiff of the court ; or

(ii) the plaintiff or some person in his permanent and exclusive employ ; or

(iii) the solicitor of the plaintiff or a solicitor acting as agent for such solicitor or some person employed by either solicitor to serve a notice.

(3) Where the plaintiff requests that the notice should be served by bailiff, the plaintiff shall file the notice in the court office together with as many copies thereof as there are defendants, and the following provisions shall apply with regard to service :—

(*a*) the notice may be served by delivering it to the defendant in any district in which he may be found ; or

(*b*) where the court for the district in which the notice is to be served is satisfied by a report of the bailiff or otherwise that, if the notice is served by delivering it at the defendant's residence or by sending it by post there is a reasonable probability that the notice will come to the knowledge of the defendant in sufficient time for him to have an opportunity of appearing at the hearing of the application, the notice may be so served ; or

(*c*) if the application is made in an action for possession of any premises or for delivery of goods alleged to be in any premises and the notice cannot, in the opinion of the court, be served in accordance with the foregoing provisions of this paragraph, the notice may, if the court thinks fit, be served by delivering it to some person on the premises or (if the action is for possession of premises) by affixing it to a conspicuous part of the premises, and such service shall have the same effect as service of the notice on the defendant.

(4) Where no request is made that the notice should be served by bailiff, the notice shall be served by delivering it to the defendant in any district in which he may be found.

(5) Subject to the following provisions of this Rule, Order VIII (including Rule 6 of that Order which relates to substituted service) shall apply to the service of a notice under this Rule.

25. *Procedure at the hearing of application.*]—In any action or matter an application for leave to proceed—

(*a*) may be heard and determined notwithstanding that there is no appearance by the plaintiff or defendant, and

(*b*) if made after judgment, may be heard and determined by the registrar whether the judgment was given by the judge or by the registrar.

(*To be continued.*)